

104TH CONGRESS
1ST SESSION

S. 554

To amend the provisions of titles 5 and 28, United States Code, relating to equal access to justice, award of reasonable costs and fees, hourly rates for attorney fees, administrative settlement offers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 14 (legislative day, MARCH 6), 1995

Mr. FEINGOLD introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the provisions of titles 5 and 28, United States Code, relating to equal access to justice, award of reasonable costs and fees, hourly rates for attorney fees, administrative settlement offers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. EQUAL ACCESS TO JUSTICE REFORM.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Equal Access to Justice Reform Amendments of 1995”.

6 (b) AWARD OF COSTS AND FEES.—

7 (1) ADMINISTRATIVE PROCEEDINGS.—Section
8 504(a)(2) of title 5, United States Code, is amended

1 by inserting after “(2)” the following: “At any time
 2 after the commencement of an adversary adjudica-
 3 tion covered by this section, the adjudicative officer
 4 may ask a party to declare whether such party in-
 5 tends to seek an award of fees and expenses against
 6 the agency should it prevail.”.

7 (2) JUDICIAL PROCEEDINGS.—Section
 8 2412(d)(1)(B) of title 28, United States Code, is
 9 amended by inserting after “(B)” the following: “At
 10 any time after the commencement of an adversary
 11 adjudication covered by this section, the court may
 12 ask a party to declare whether such party intends to
 13 seek an award of fees and expenses against the
 14 agency should it prevail.”.

15 (c) HOURLY RATE FOR ATTORNEY FEES.—

16 (1) ADMINISTRATIVE PROCEEDINGS.—Section
 17 504(b)(1)(A)(ii) of title 5, United States Code, is
 18 amended by striking out all beginning with “\$75 per
 19 hour” and inserting in lieu thereof “\$125 per hour
 20 unless the agency determines by regulation that an
 21 increase in the cost-of-living based on the date of
 22 final disposition justifies a higher fee.);”.

23 (2) JUDICIAL PROCEEDINGS.—Section
 24 2412(d)(2)(A)(ii) of title 28, United States Code, is
 25 amended by striking out all beginning with “\$75 per

1 hour” and inserting in lieu thereof “\$125 per hour
2 unless the court determines that an increase in the
3 cost-of-living based on the date of final disposition
4 justifies a higher fee.);”.

5 (d) OFFERS OF SETTLEMENT.—

6 (1) ADMINISTRATIVE PROCEEDINGS.—Section
7 504 of title 5, United States Code, is amended—

8 (A) by redesignating subsections (e) and
9 (f) as subsections (f) and (g), respectively; and

10 (B) by inserting after subsection (d) the
11 following new subsection:

12 “(e)(1) At any time after the filing of an application
13 for fees and other expenses under this section, an agency
14 from which a fee award is sought may serve upon the ap-
15 plicant an offer of settlement of the claims made in the
16 application. If within 10 days after service of the offer the
17 applicant serves written notice that the offer is accepted,
18 either party may then file the offer and notice of accept-
19 ance together with proof of service thereof.

20 “(2) An offer not accepted shall be deemed with-
21 drawn. The fact that an offer is made but not accepted
22 shall not preclude a subsequent offer. If any award of fees
23 and expenses for the merits of the proceeding finally ob-
24 tained by the applicant is not more favorable than the
25 offer, the applicant shall not be entitled to receive an

1 award for attorneys' fees or other expenses incurred in re-
2 lation to the application for fees and expenses after the
3 date of the offer.'".

4 (2) JUDICIAL PROCEEDINGS.—Section 2412 of
5 title 28, United States Code, is amended—

6 (A) by redesignating subsections (e) and
7 (f) as subsections (f) and (g), respectively; and

8 (B) by inserting after subsection (d) the
9 following new subsection:

10 “(e)(1) At any time after the filing of an application
11 for fees and other expenses under this section, an agency
12 of the United States from which a fee award is sought
13 may serve upon the applicant an offer of settlement of the
14 claims made in the application. If within 10 days after
15 service of the offer the applicant serves written notice that
16 the offer is accepted, either party may then file the offer
17 and notice of acceptance together with proof of service
18 thereof.

19 “(2) An offer not accepted shall be deemed with-
20 drawn. The fact that an offer is made but not accepted
21 shall not preclude a subsequent offer. If any award of fees
22 and expenses for the merits of the proceeding finally ob-
23 tained by the applicant is not more favorable than the
24 offer, the applicant shall not be entitled to receive an
25 award for attorneys' fees or other expenses incurred in re-

1 lation to the application for fees and expenses after the
2 date of the offer.”.

3 (e) ELIMINATION OF SUBSTANTIAL JUSTIFICATION
4 STANDARD.—

5 (1) ADMINISTRATIVE PROCEEDINGS.—Section
6 504 of title 5, United States Code, is amended—

7 (A) in subsection (a)(1) by striking out all
8 beginning with “, unless the adjudicative offi-
9 cer” through “expenses are sought”; and

10 (B) in subsection (a)(2) by striking out
11 “The party shall also allege that the position of
12 the agency was not substantially justified.”.

13 (2) JUDICIAL PROCEEDINGS.—Section 2412(d)
14 of title 28, United States Code, is amended—

15 (A) in paragraph (1)(A) by striking out “,
16 unless the court finds that the position of the
17 United States was substantially justified or that
18 special circumstances make an award unjust”;

19 (B) in paragraph (1)(B) by striking out
20 “The party shall also allege that the position of
21 the United States was not substantially justi-
22 fied. Whether or not the position of the United
23 States was substantially justified shall be deter-
24 mined on the basis of the record (including the
25 record with respect to the action or failure to

1 act by the agency upon which the civil action is
2 based) which is made in the civil action for
3 which fees and other expenses are sought.”; and

4 (C) in paragraph (3) by striking out “, un-
5 less the court finds that during such adversary
6 adjudication the position of the United States
7 was substantially justified, or that special cir-
8 cumstances make an award unjust”.

9 (f) REPORTS TO CONGRESS.—

10 (1) ADMINISTRATIVE PROCEEDINGS.—No later
11 than 180 days after the date of the enactment of
12 this Act, the Administrative Conference of the
13 United States shall submit a report to the Con-
14 gress—

15 (A) providing an analysis of the variations
16 in the frequency of fee awards paid by specific
17 Federal agencies under the provisions of section
18 504 of title 5, United States Code; and

19 (B) including recommendations for extend-
20 ing the application of such sections to other
21 Federal agencies and administrative proceed-
22 ings.

23 (2) JUDICIAL PROCEEDINGS.—No later than
24 180 days after the date of the enactment of this Act,

1 the Department of Justice shall submit a report to
2 the Congress—

3 (A) providing an analysis of the variations
4 in the frequency of fee awards paid by specific
5 Federal districts under the provisions of section
6 2412 of title 28, United States Code; and

7 (B) including recommendations for extend-
8 ing the application of such sections to other
9 Federal judicial proceedings.

10 (g) EFFECTIVE DATE.—The provisions of this Act
11 and the amendments made by this Act shall take effect
12 30 days after the date of the enactment of this Act and
13 shall apply only to an administrative complaint filed with
14 a Federal agency or a civil action filed in a United States
15 court on or after such date.

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